Supreme Court of the United States

OCTOBER TERM, 1943.

No. _____.

MRS. LORENA MARBRY, PETITIONER,

VS.

GEORGE W. CAIN, AND GARNISHEE, AMERICAN CENTRAL INSURANCE COMPANY, RESPONDENTS.

BRIEF IN SUPPORT OF PETITION.

This brief, in support of the petition for writ of certiorari, seeks to reverse the judgment of the Supreme Court of Tennessee which held that Mrs. Lorena Marbry's judgment for $3,500 obtained in 1941 *was not exempted under Section 17 of the Bankrupt Act*, 11 U. S. C. A., Sec. 35, which provides:

> "A discharge in bankruptcy shall relieve a bankrupt from all of his provable debts whether liable in full or in part, except such as * * * or liabilities * * * for wilful and malicious injuries to persons * * * of another."

The $3,500 judgment was for compensatory and *punitive* damages and was *final*, and under neither State nor Federal law, could it be *modified* or *revised* and it carries with it *an adjudication of a wilful tort* and the plaintiff sued for and recovered compensatory and *punitive* damages and this was final; and many terms of court had ended, and by both the decisions, and statutory laws of Tennessee, the judgment was crystallized into a *wilful tort not dischargeable in bankruptcy.*

STATEMENT OF CASE.

In interest of brevity Your Honors are respectfully referred to the petition for writ of certiorari herein in which is recited a statement of facts, as well as statement of history of the case. The statute involved in this lawsuit is Sec. 17 of 11 U. S. C. A., Sec. 35, which deprives the bankrupt court of *jurisdiction to discharge* debts where they are "Liabilities for wilful and malicious injuries to the person * * * of another."

SUMMARY OF ARGUMENT.

Federal Question.

The questions involved in this Marbry case fundamentally and necessarily involve the interpretation and application of the Constitution of the United States, an Act of Congress relating to bankruptcy, and the Federal Court's construction of this Act. And the Tennessee courts' decisions are inapplicable. *Tinker* v. *Colwell*, 193 U. S. 473; *McIntyre* v. *Kavanaugh*, 242 U. S. 138; *Y. & M. V. R. Co.* v. *Mullins*, 249 U. S. 531; *Miles* v. *I. C. R. R. Co.*, 315 U. S. 722, and like cases.

Were Federal Questions Properly Raised?

The *plea of discharge in bankruptcy* was admitted by demurrer to said plea which challenged that *Mrs. Marbry's judgment was for a wilful tort*, and the *bankrupt court had no jurisdiction* and *no power* under the Act of Congress to *discharge such liability for wilful tort*. The assignments of error before the Supreme Court of Tennessee raised the same questions and the Supreme Court of Tennessee recognized that it was a federal right involved, but erroneously, we think, applied federal law and deprived Mrs. Marbry of this federal right.

Neither the Practice Nor Decisions of Tennessee Courts Can Enlarge, Diminish or Destroy This Federal Right of Mrs. Marbry.

Federal rights growing out of the Act of Congress cannot be enlarged or diminished by State Courts and their decisions, through state practice, or by whatever

means or names the state courts may give to the remedy or distinctions that may be made by state practice:

> "Since federal rights are involved no state court can screen denial of or discrimination against a federal right under the guise of enforcing a local law." *Davis* v. *Westchester*, 263 U. S. 22; *Miles* v. *I. C. R. R. Co.*, 315 U. S. 722 and like cases.
>
> "States may not discriminate against a right arising under federal law." *McKnett* v. *S. L. & S. F. R. Co.*, 292 U. S. 234.

The Rights of Mrs. Marbry Are Fixed by the Constitution of the United States and Acts of Congress.

Article I, Section 8, of the Constitution provides Congress has power over

> "And uniform laws on the subject of bankruptcy throughout the United States."

Article VI provides:

> "This Constitution and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land."

And the Act of Congress, 11 U. S. C. A. 35, Section 17, takes away from the Bankrupt Court jurisdiction to discharge:

> "Liabilities * * * for wilful tort and malicious injuries to the person * * * of another."

The Federal Court's Construction of the Federal Statute Is Supreme and the State Courts Are Bound Thereby.

The Federal Court's construction of the federal statute becomes a part of said statute and binds State courts to follow same and not exercise *their own idea of the meaning and application of the federal law*, creating this

federal right to Mrs. Marbry. The Federal Courts have held this in conversion cases:

Re Arnes, (D. C.) 210 Fed. 395.
Re Keeler, (D. C.) 243 Fed. 720.
Re Baker v. *Bryant Fertilizer Co.*, (C. C. A. 4) 271 Fed. 473.
Re Northrup, (D. C.) 265 Fed. 420.
Re Bryant, (D. C.) 3rd F. 2d 709.

In the *Baker case*, 271 Fed. 473 the Fourth Circuit speaking through Judge Knapp holding as to Baker:

> "The record in the case indicates that he deliberately took the company's money and used it in cotton speculation."

Then the court proceeded to hold evidently that he "*intended the natural consequences of his act*," as we have urged all the way through this case, and therefore Baker was guilty of *conversion* and the Bankrupt Court had no jurisdiction to *discharge such a liability*.

In the case of *Tinker* v. *Colwell*, 193 U. S. 473; *McIntyre* v. *Kavanaugh*, 242 U. S. 138, it has been expressly held by these federal decisions that a discharge in bankruptcy does not relieve a "malicious wrongdoer from his liability" if the intention of the wrongdoer has been *presumed* or *implied* from *his acts* and the *circumstances*. The declaration in this case of *Mrs. Marbry* v. *George W. Cain* sued for compensatory and punitive damages and alleged in her pleadings negligences and *also such facts as constitute a wilful tort*. The declaration conformed to Section 8564 of the Code of Tennessee and the construction of that by the Supreme Court of Tennessee and its decisions and it was not in the power of that Court to revise or modify in any particular that final judgment of a former term of Court. And to do this would in fact

be discrimination between litigants and not only contrary to the construction of the constitutional right but to the decisions of both the Court of Tennessee and the Federal Government. *Overton* v. *Biglow*, 10 Yerg. 48; *Elliot* v. *Cochran*, 1 Cold. 389; *Siabald* v. *U. S.*, 12 Peters, 488; *State* v. *Bank of Commerce*, 96 Tenn. 598.

And;

> "*All* the *issues* which *might have been raised* and litigated *are concluded* the *same* as if they had been directly adjudicated and *included in the judgment or decree.*" 96 Tenn. 692.

And in fixing exemplary and punitive damages in Tennessee for the last 60 years or more the Supreme Court of Tennessee has announced the law as:

> "There need not be positive proof of malice or oppression. If the transaction or the facts shown in connection therewith *fairly imply its existence.*"
> *McGee* v. *Holland*, 3 Dutch 86.
> *R. R.* v. *Guinon*, 79 Tenn. 98.

And the same has been announced in other cases, and the declaration that *charged the facts in this case* brings it within that law because the facts confessed as true says that the defendant, George W. Cain:

> "After getting into said car and getting *hold of the steering wheel*, he managed, operated and *directed* said car *so as to run same over the plaintiff* who was using the sidewalk."

Therefore under *these facts confessed as true* it may be *fairly implied* or *presumed* that, after he got control of the car by getting hold of the steering wheel, he not only recklessly managed and operated the car but he *directed* it, "*pointed it*," and "*aimed it so as to run over*

the plaintiff." If this language was in an indictment for a criminal offense of malicious homicide and there had been a conviction (as there has in this case) and no bill of exception appearing as to what testimony was heard, then the judgment, like rendered in this case, it must be *presumed* or *implied* that the trial court charged the *confessed declaration as true* and it must be *presumed* or *implied* that the jury did not go contrary to such charge and such confession of facts as appeared in the record. And *there is nothing contrary in the verdict*, of jury and the judgment rendered or pronounced by the Court. The statutory law of Tennessee appears in Code of 1932, Section 10343, and provides:

> "A general verdict, although it may not in terms answer every issue joined, *is nevertheless held to embrace every issue*, unless exception is taken at the term in which the verdict is rendered."

And the record does not show any exception taken and in addition thereto the Supreme Court of Tennessee for the last 50 years has settled the law and said:

> "We understand it to be well settled, that *all issues* which *might* have been raised and litigated, are concluded, the same as if they had been duly adjudicated and included in the judgment or decree. *Lindsley* v. *Thompson*, 1 Tenn. Chy. 272; 21 Am. & Eng. Enc. of L. 216." *State* v. *Bank of Commerce*, 96 Tenn. 592.

And it having been the statutory law of Tennessee that,

> "*All* wrongs and injuries to * * * person may be redressed by *an* action of the *facts* of the case." Sec. 8564.

The pleader is presumed to have followed this statutory law, and sought and pleaded for compensatory and

exemplary or punitive damages. The facts pleaded were confessed as true, when a judgment by default was entered as provided by Section 8404, Code.

Tennessee construing this statute said:

> "If the party is sued upon a valid obligation *to which he has no defense*, and consequently attempts to interpose none, a judgment by default may be naturally and properly taken against him.
>
> A judgment by default is a judgment *either from the fact that a defendant has no defense to make*, or does not appear to make it."
>
> *Bank* v. *Divine Grocery Co.*, 97 Tenn. 602, 37 S. W. 390, 34 L. R. A. 445.

A person cannot take advantage of his own wrong. And no court should assist such person to take advantage of his own wrong, and especially is this true, when a court reads into the record a fact not in the record, and which is read into the record contradicts, diminishes, and destroys the *facts charged in the declaration that was admitted as true* 3 years before or after 16 terms of the trial court had ended.

If rights created by Federal Constitution and law, can be whittled away by a state court thusly, then indeed "federal rights" will soon become, in the picturesque language attributed to Abraham Lincoln,

> "as thin as the homeopathic soup made by boiling the shadow of a pigeon that had starved to death."

CONCLUSION.

Mrs. Marbry's right to her judgment was exempted from a discharge in Bankruptcy, under Section 17 as a wilful tort, as this right was created by the womb of Congress (Sec. 17, 11 U. S. C. A. 35), and this lawsuit involving this "federal right," being a federal question, this tribunal is asked to protect that right, grant a writ of certiorari, and reverse the action of the Tennessee courts.

With the fullest measure of confidence in the ends that will be reached by Your Honors, we most respectfully submit client's rights in the foregoing petition and brief.

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